

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYRONE WILLIE BRADLEY,

Defendant-Appellant.

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UNPUBLISHED

December 19, 2006

No. 266556

Wayne Circuit Court

LC No. 05-006663-02

Before: Meter, P.J., and O’Connell and Davis, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529, and assault with intent to rob while armed, MCL 750.89. The trial court sentenced defendant to serve concurrent terms of 9 to 15 years in prison for each offense. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

While armed with handguns, defendant and a codefendant approached two occupants of a parked car and demanded their possessions, obtaining nothing from one victim and the wallet of the other victim. In addition to the above charges, defendant was charged with possession of a firearm during the commission of a felony, MCL 750.227b, and felon in possession of a firearm, MCL 750.224f. However, the jury acquitted defendant of those charges.

On appeal, defendant challenges his score for two offense variables (OVs) under the sentencing guidelines. “[W]e uphold the sentencing court’s scoring decisions if there is any supporting evidence in the record.” *People v Spanke*, 254 Mich App 642, 647; 658 NW2d 504 (2003). Subsection (2) of MCL 777.32 provides that if an accomplice receives points under OV 2, then all the offenders will receive the same number of points. Defendant objected at sentencing to being assessed points for OV 2, because the jury had found him not guilty of the firearm-related charges. However, the trial court correctly assessed five points because defendant’s accomplice and codefendant was assessed five points.

Defendant argues that the statute is internally inconsistent because it initially reserves the assessment of points for this variable to the “offender” who “possessed” a dangerous weapon, but then authorizes assessing points to a person not in actual possession of such weaponry. We disagree. Subsection (2) simply reflects the common-law principle that all primary participants in a crime bear full responsibility. See *People v Robinson*, 475 Mich 1, 7; 715 NW2d 44 (2006).

Defendant concedes that sentencing decisions need not necessarily reflect the verdict, so his own acquittals for the firearm-related offenses are not dispositive. See *People v Drohan*, 475 Mich 140, 159; 715 NW2d 778 (2006); *People v Potrafka*, 140 Mich App 749, 751-752; 366 NW2d 35 (1985); MRE 1101(b)(3). Because there is no dispute that defendant's codefendant received five points for being armed, the trial court properly assessed that number of points against defendant as well. We decline defendant's invitation to disregard MCL 777.32(2) by holding that personal possession is required for the assessment of points for OV 2.

The trial court also assessed defendant 25 points for OV 13, which concerns continuing patterns of criminal behavior. This is the total prescribed when the offense in question "was part of a pattern of felonious criminal activity involving 3 or more crimes against a person." MCL 777.43(1)(b). Under OV 13, "all crimes within a 5-year period, including the sentencing offense, shall be counted regardless of whether the offense resulted in a conviction." MCL 777.43(2)(a). At sentencing, defense counsel conceded that defendant's record included a felony dating from 2004, and the presentence investigation report indicates that this was assault with intent to do great bodily harm, MCL 750.84. On appeal, defendant argues that because OV 13 is intended to address patterns of *continuing* activity, the two crimes that resulted from a single incident in this case should count only once. We disagree.

Defendant's two instant convictions stemmed from the armed robbery of one victim and the assault of a second victim. This single transaction resulted in two distinct crimes against persons. See *People v Harmon*, 248 Mich App 522, 532; 640 NW2d 314 (2001). Because they, and the 2004 assault, add up to three crimes against a person in a five-year period, the trial court properly assessed 25 points for OV 13. MCL 777.43. Moreover, the Legislature has specifically addressed circumstances in which certain convictions should not be separately counted if they stem from a single incident. MCL 777.43(2)(e) and (f). Because the Legislature did not expand this particular exception into a general rule, we will not usurp its role by generally applying the exception to this case. See *People v Adams*, 262 Mich App 89, 97-98; 683 NW2d 729 (2004); *People v Ramsdell*, 230 Mich App 386, 392-393; 585 NW2d 1 (1998).

Affirmed.

/s/ Patrick M. Meter  
/s/ Peter D. O'Connell  
/s/ Alton T. Davis